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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,076	10/03/2001	John A.T. Young	960296.97745	9060

7590 09/05/2002
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EXAMINER

MINNIFIELD, NITA M

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 09/05/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,076

Applicant(s)

YOUNG ET AL.

Examiner

N. M. Minnifield

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 and 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 5-13 and 19-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 5 sheets
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Applicant's election with traverse of Group II, claims 5-13 and 19-21 as they relate to elected species SEQ ID NO: 1, in Paper No. 11 is acknowledged. The traversal is on the ground(s) that the polynucleotide of Group II encodes the polypeptide sequence of Group I, and accordingly a complete search by the Examiner will require the Examiner to look for the polypeptide sequences of Group I. Applicants assert that there is no additional burden upon the Examiner to consider both groups together, while in contrast the restriction of these claims into two separate patents imposes a substantial burden upon Applicants. This is not found persuasive. The restricted Groups have acquired a separate status in the art as a separate subject for inventive effect and require independent searches. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. A reference, which would anticipate the invention of one group, would not necessarily anticipate or make obvious any of the other groups. Moreover, as to the question of burden of search, classification of subject matter is merely one indication of the burdensome nature of the search involved. The literature search, particularly relevant in this art, is not co-extensive and is much more important in evaluating the burden of search. Burden in examining materially different groups having materially different issues also exist.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-4 and 14-18 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and/or

species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

3. Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are vague and indefinite with regard to the recitation of "a portion"; what are the metes and bounds of a portion. How much less of the full sequence of SEQ ID NO: 1 is needed to meet the hybridization conditions?

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. It is noted that Applicants are entitled to the filing date of 10/3/01, not the filing date of the provisional application 60/251481 filed 12/5/00. The provisional application is not in compliance with the CRF Rules. If Applicants desire priority back to the provisional application, Applicants should direct the Examiner to the exact support, by page and sequence number, in the specification of the

provisional application. Further, the provisional application is not available to the Examiner at present.

6. Claims 5-7, 9-13, and 19-21 are rejected under 35 U.S.C. 102(a) as being anticipated by WO200134626-A1 (Accession #:AAD5303) , Accession # BC012074 from NCBI,

The prior art discloses a polynucleotide sequence that has 99.7% similarity/identity with the claimed SEQ ID NO: 1. The prior art discloses the claimed polynucleotide sequence of SEQ ID NO: 1 or a fragment thereof. The prior art discloses methods for producing the polypeptide encoded by the polynucleotide sequence.

7. Claims 5-13, and 19-21 are rejected under 35 U.S.C. 102(a) as being anticipated by Bradley et al 2001 (Nature, 414(6860):225-229)

Bradley et al discloses a cellular receptor for the anthrax toxin, that it binds the protective antigen (abstract), and the sequence of the receptor (figure 2; see also Accession #: AF21380). Bradley et al discloses methods of cloning sequencing and producing the polypeptide encoded by the polynucleotide sequence (p. 228, col. 2). Bradley et al also references GenBank accession code BC012074 (p. 228). The prior art discloses SEQ ID NO: 1 or a fragment thereof.

8. Claims 5-10 are rejected under 35 U.S.C. 102(a) or (b) as being anticipated by St. Croix et al (2000).

The prior art discloses the polynucleotide sequence as set forth in claimed SEQ ID NO: 1 or a fragment thereof (see accession # AF279145).

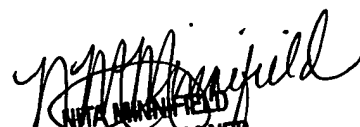
9. No claims are allowed.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 703-305-3394. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette R.F. Smith can be reached on 703-308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


N. M. MINNIFIELD
PRIMARY EXAMINER
AU 1645
8/30/02